

FILED

DEC 11 2013

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE**

Clerk, U. S. District Court
Eastern District of Tennessee
At Knoxville

PENNSYLVANIA NATIONAL MUTUAL)
CASUALTY INSURANCE COMPANY,)
as subrogee of SBR PROPERTIES, LLC)

Plaintiff)

v.)

SWIFT TRANSPORTATION CO. OF)
ARIZONA, LLC;)

SWIFT TRANSPORTATION CO., INC.;)

SWIFT TRANSPORTATION)
CORPORATION; and)

SWIFT TRANSPORTATION)
SERVICES, INC.)

Defendants)

No. 3:13-CV-714

JURY DEMANDED

Mattice Guyton

COMPLAINT

Comes the plaintiff and sues the defendants, alleging a cause of action as follows:

PARTIES

1. The plaintiff, Pennsylvania National Mutual Casualty Insurance Company ("Penn National"), is a Pennsylvania corporation with principal offices located at Two North Second Street; Harrisburg, Pennsylvania 17101. Penn National is authorized to conduct business in Tennessee, and brings this action as subrogee of SBR Properties, LLC ("SBR"), a Tennessee Limited Liability Company.

2. The defendants, Swift Transportation Co. of Arizona, LLC; Swift Transportation Co., Inc.; Swift Transportation Corporation; and Swift Transportation Services, Inc. (collectively, "Swift"), are believed to be one or more separate Delaware corporations with principal offices at 2200 South 75th Avenue; Phoenix, Arizona 85043. Swift has designated the following as its registered agent for service of process in Tennessee.

National Registered Agents, Inc.
800 South Gay Street, Suite 2021
Knoxville, Tennessee 37929

JURISDICTION

3. Penn National is a resident of the State of Pennsylvania. Swift is a resident of the State of Arizona. Because there exists complete diversity of citizenship between the parties, and the amount in controversy, exclusive of interest and costs, exceeds \$75,000.00, jurisdiction is proper in this Court pursuant to the provisions of 28 U.S.C. § 1332.

VENUE

4. Swift is a national trucking firm with a transportation terminal located in Memphis, Tennessee. As part of its trucking network, Swift routinely conducts business in Knox County, Tennessee. In addition, Swift maintains its registered agent for service of process in Knox County. As a result, Swift is subject to the Court's personal jurisdiction and is deemed a resident of Knox County pursuant to 28 USC § 1391(c)(2). Accordingly, venue is proper in this court pursuant to 28 USC § 1391(b)(1).

RELEVANT FACTS

5. On or about November 23, 2011, Zachary L. Charleston ("Charleston") was operating a large tractor-trailer owned by one of the Swift entities in the westbound lanes of

Interstate Highway 40 in Shelby County, Tennessee. As he attempted to exit the highway at Airline Road, Charleston lost control of his vehicle, traveled across Airline Road, and drove his tractor-trailer into a service station and grocery mart owned by Penn National's insured, SBR. The impact completely destroyed the service station and grocery mart, some outside fixtures, and another vehicle parked in the parking lot.

6. As a result of the collision, Penn National was forced to pay SBR over \$800,000.00 in insurance benefits to compensate it for property damage and other business related losses caused by the accident. Following the accident, Charleston was charged and convicted of "Failure to Exercise Due Care."

7. At the time of the accident, Charleston was operating his vehicle within the scope of his employment with Swift. As a result, Swift is liable for all acts and omissions of its employee, Charleston.

CLAIM FOR COMMON LAW NEGLIGENCE

8. At the time of the accident, Charleston was guilty of common law negligence, including, but not limited to, the following:

- (a) Failure to keep his vehicle under control.
- (b) Failure to operate his vehicle in a safe and proper manner.
- (c) Failure to deviate, change, or alter his course of travel when he knew or should have known that an accident was imminent.
- (d) Failure to keep a proper lookout ahead.
- (e) Operating his vehicle at an unsafe speed.
- (f) Operating his vehicle in an unsafe manner.
- (g) Operating his vehicle in total disregard for the safety of others.

CLAIM FOR NEGLIGENCE PE SE

9. At the time of the accident, Charleston was also in violation of numerous provisions of Tennessee Code Annotated, including, but not limited to, the following:

- (a) Tennessee Code Annotated, Section 55-8-136: Failure to exercise due care.
- (b) Tennessee Code Annotated, Section 55-8-152: Failure to obey the speed limit.
- (c) Tennessee Code Annotated, Section 55-10-205: Reckless driving.

The violation of the above statutes by Charleston constituted negligence per se.

CLAIM FOR PUNITIVE DAMAGES

10. At the time of the accident, Charleston was operating his vehicle with intentional disregard for the safety of others and in such a wanton, reckless, and malicious manner so as to make him further liable to Penn National for punitive damages.

DAMAGES

11. As a direct and proximate result of Charleston's negligence and conduct as set forth above, Penn National has been forced to pay insurance benefits to its insured, SBR, to which it is now entitled to reimbursement from Swift.

DEMAND

WHEREFORE, Penn National demands:

- 1. That a copy of this complaint be served upon Swift.
- 2. That a jury be empaneled to try all issues triable by jury.
- 3. That, upon a trial, Penn National be awarded a judgment against Swift in an amount equal to all benefits and other sums paid to SBR as a result of the collision, together with

incidental damages, consequential damages, prejudgment interest, post-judgement interest, and all costs and expenses of litigation.

4. That Penn National have such other, further, and additional relief to which it may be entitled.

Respectfully submitted,


s/ Charles G. Taylor, III

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